IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1641 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
CHEHARAJI TITAJI PARMAR & 1 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
SERVED BY RPAD - (N) for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the learned Commissioner for Workmen's Compensation and Civil Judge (Senior Division)(for short, 'The Authority'), Himatnagar passed in W.C.A. No.9 of 1986 dated 20th January, 1988.

2.0 The brief facts of the case are that present opponent No.1 was engaged by the present opponent No.2 to work on a tractor owned by him

and bearing No. GAD 7679. On 03.12.1985, when the opponent No.1 was working with the thresher attached to the aforesaid tractor, he met with an accident. On account of the said accident, opponent No.1 sustained serious bodily injuries, and therefore, he sent notices to the present appellant as well as to the opponent No.2 claiming compensation. Since, they did not take any action, the opponent No.1 preferred an application claiming an amount of Rs.36,863.40/- by way of compensation.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard. On perusal of the deposition of the opponent No.1(Exh.27), it transpires that opponent No.1 was engaged by the opponent No.2 to work as thresher machine operator on his tractor and was paid Rs.14/- per day. It further transpires that on the day of incident the

opponent No.1 had gone to village Bhuta along with opponent No.2 and while he was working on the thresher, on the instruction of opponent No.2, he met with the accident. The story narrated by the opponent No.1 is not challenged by the opponent No.1 as well as the appellant. It is not in dispute that the notices claiming compensation dated 05.03.1986 and 20.03.1986 were received by the opponent No.1 as well as by the present appellant. Therefore, the Authority directed the appellant and the opponent No.2 to satisfy the award.

3.1 However, while passing the impugned judgment and award the Authority has overlooked the fact that as per the provisions of Section 2(30) of the Motor Accident Vehicle Act, the definition of 'tractor' means a motor vehicle which is not itself constructed to carry any load (other than equipment)used for the purpose of propulsion, excluding a road-roller. Hence, it becomes clear that the 'tractor' is to be used only for the purpose of propulsion only and not

for carrying any load. Therefore, mere insuring of tractor by the Insurance Company does not make it liable to satisfy the claim arising out of an accident on account of a machine attached with it, unless the same is insured. On perusal of insurance policy of the said tractor(Exh.43), it clearly transpires that no additional premium was paid by the opponent No.2 in respect of threshing machine. Therefore, direction of the Authority holding the appellant-Insurance Company liable to satisfy the claim requires to be reversed.

4.0 In the result, the appeal is allowed. The judgment and award of the learned Commissioner for Workmen's Compensation and Civil Judge (Senior Division), Himmatnagar passed in W.C.A. No.9 of 1986 dated 20th January, 1988 is quashed and set aside qua the appellant-Insurance Company only. The amount deposited by the appellant-Insurance Company will be refunded to it. However, if the amount has, already, been withdrawn by the original claimant, the same will

not be recovered from the claimant. It will be open for the appellant-Insurance Company to recover the same from the owner of the offending vehicle. If the amount is not paid to the claimant, it will be open for the claimant to recover the same from the owner. The judgment and award of the Authority is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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